

DATE: November 29, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 06-24860
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was born in the U.S. but has lived and worked in Japan since at least 1992. The resident citizenship in Japan of Applicant's immediate family members is mitigated. They are not agents of a foreign power, and it is unlikely Japan would try to apply pressure or coercion on and through them to Applicant. His one-time failure to register himself with the Selective Service System (SSS) no longer casts doubt on his reliability, trustworthiness, or good judgment. Clearance is granted.

**STATEMENT OF CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a

security clearance for Applicant. On February 2, 2007, under Executive Order 10865 and Department of Defense Directive 5200.6, dated January 2, 1992, reissued through Change 4, April 20, 1999, with revised adjudicative guidelines implemented on September 1, 2006, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the foreign influence guideline (Guideline B) and the personal conduct guideline (Guideline E) of the Directive. In his answer, notarized on February 20, 2007, Applicant requested a decision be made on the record in lieu of a hearing.

A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on July 24, 2007. Applicant received the FORM on August 1, 2007. Response was due on August 31, 2007. No response was received. The case was assigned to me for decision on November 1, 2007.

### **RULINGS ON PROCEDURE**

In Section I of the FORM, the Government requested I take official notice of Items 8 through 15, and explained the relevance of the noticed exhibits in Section III. Based on my authority to take official notice of well-known facts or government reports, I have taken official notice of the information related to Japan. I have also taken official notice of the Selective Service Act of 1917, (40 Stat.76), and the online site of the SSS, Office of Public and Intergovernmental Affairs at <http://www.sss.gov>, and referred to in Item 6.

### **FINDINGS OF FACT**

Applicant admitted the seven foreign influence allegations under paragraph 1. He also admitted that he did not register with the United States SSS, believing the registration was voluntary. When he attempted to register, his application was rejected due to his age.

Applicant, 34 years old, was born in the United States in October 1973. He has lived in Japan since he was very young. His security clearance form (SCA, Item 4) discloses that he attended college in Japan for five years between 1992 and 1997. He did not receive a diploma. The SCA also reflects that Applicant has worked in Japan since at least 1992 (subparagraph 1.g.).

Applicant's spouse (subparagraph 1.a.) was born in July 1973 in Japan; they were married in the country in June 1997. She is a sales clerk in a candy store. According to Applicant, she is not an agent of a foreign power, and not in a position to be exploited by a foreign power. Applicant's nine-year-old child (subparagraph 1.b.), a resident citizen of Japan, resides with Applicant and his spouse at the current residence listed in module 4 of Applicant's SCA (Item 4). His son attends private school.

Applicant's mother (subparagraph 1.c.) is a resident citizen of Japan, living with Applicant's father until recently as reported by Applicant in his answer to the SOR on February 20, 2007. She is 59 years old and is a retired homemaker. When his father retires from his civilian position with the U.S. Department of Defense, Applicant's mother will retire with him in Hawaii or Guam.

Applicant indicates she is not an agent of a foreign power. Applicant's father (subparagraph 1.d.), 57 years old, is a citizen of the United States U.S. However, he moved from Japan, and is now a resident of the U.S., although Applicant does not know whether his new address will be his current residence.

Applicant's mother-in-law (subparagraph 1.e.), 47 years old, lives about a block from Applicant's family; he sees her several times a week. She owns a restaurant. Applicant's brother-in-law (subparagraph 1.f.), 29 years old, lives with Applicant's mother-in-law, and works as a cook in the mother-in-law's restaurant. Applicant sees him about once a week.

Not alleged in the SOR, but identified as a relative in Applicant's August 1, 2006 interview is his grandmother, 87 years old and a retired homemaker. Applicant contacts her by telephone several times a year. Applicant's uncle is 57 years old and a business owner. Applicant has not seen his uncle in about five years.

The relatives (resident citizens of Japan) not alleged in the SOR on his wife's side of the family include his spouse's sister, 32 years old, employed as a beautician, and married to a sales representative. Applicant sees her about once a month. His spouse also has an aunt who is a sales clerk, and a grandmother (retired homemaker) who lives with Applicant's mother-in-law. Applicant sees his wife's aunt and grandmother every three to six months.

Applicant has held eight employment positions in Japan (subparagraph 1.g.) since 1992 (Item 4) His employers have been mostly U.S. corporations providing information services to the U.S. Department of Defense in Japan. Since August 2003, Applicant's primary employment (as indicated in his SCA) has been a database administrator with a defense contractor (U.S. company). The contractor performs work on the same U.S. installation that his father was assigned. Currently, he is a financial systems analyst. Since March 2001, Applicant has also been employed part-time as an English language instructor.

According to the interview with Applicant on August 1, 2006, he does not believe any of his relatives are connected to any foreign government. None of his relatives have asked questions about his work, his security clearance or sensitive government information. Applicant does not have any preference or allegiance for any country outside the U.S., and will follow security procedures by reporting any suspicious efforts to contact him.

Applicant has a Japanese bank account that is primarily used to cover his son's education expenses. He has a checking account that he uses to pay bills. Applicant also has a bank account that he uses for travel. Applicant's last account is with the credit union.

The personal conduct allegation (subparagraph 2.a.) arises from Applicant's negative answer to question 18 (have you registered with the SSS?) of the SCA he signed on January 20, 2004. In the remarks section of the question, Applicant stated, "I believed it was voluntary until it was too late to register. I had a lack of knowledge and misunderstanding of the process. To my knowledge, I have also not been notified of the non-voluntary aspects of the registration with the Selective Service." (Item 4) Applicant added a little detail in his answer to the SOR. He failed to register because he thought that registration was voluntary permitting him to join the military at any time. Additionally, he claims he had not received any notice of the obligation to register. When he viewed the SSS

website and learned that registration was a legal requirement, he was already 26 years old and his attempt to register was rejected.

An investigation by the SSS website ([www.4.sss.gov/regver/verif\\_not\\_found.asp](http://www.4.sss.gov/regver/verif_not_found.asp)) disclosed on January 31, 2007 (Item 6) that a registration record could not be found for Applicant.

An investigation of Applicant was made by the United States Air Force Office of Special Investigations (AFOSI) that ended on October 14, 2004. The investigation (Item 7), conducted at the request of DOHA, consisted of record checks and interviews. A review of records of the air base facility and surrounding area where Applicant was (and still is) employed, “disclosed no derogatory information regarding subject.” All people interviewed recommended Applicant for a position of trust.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

### **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Foreign Influence (FI)**

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure by any foreign interest.

### **Personal Conduct (PC)**

Conduct involving questionable judgment, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability and trustworthiness.

## **CONCLUSIONS**

### **Foreign Influence (FI)**

The FI guideline calls for a careful evaluation of whether an applicant may be manipulated or induced by his foreign contacts and/or financial interests to help a foreign entity in a way that is harmful to U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Applicant's mother, mother-in-law, and brother-in-law are resident citizens of Japan.<sup>1</sup> FI disqualifying condition (DC) 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) applies based on the foreign citizenship of Applicant's family members. FIDC 7d. (*sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) applies to his spouse and child being resident citizens of Japan and sharing a residence with Applicant.

Considering the evidence as a whole, FI mitigating condition (MC) 8.a. (*the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.*) may be potentially applicable. All of Applicant's family members identified in the SOR are resident citizens of Japan except for Applicant's father. However, none of Applicant's family members are agents of any foreign government. His wife is a sales clerk in a candy store. His nine-year-old child is attending a private school. His mother is a 49-year-old retired homemaker. His father is 47 years old, a U.S. citizen, employed by the U.S. Department of Defense, and currently lives in the U.S., not Japan as alleged in the SOR. Applicant's mother-in-law is a restaurant owner. Applicant's brother-in-law is a 29-year-old cook in his mother-in-law's restaurant. Applicant's sister-in-law is 32 years old and employed as a beautician.

In determining whether the listed family members create a heightened risk of manipulation or coercion, the type of government and foreign country must be evaluated. Japan is constitutional monarchy with a parliamentary government, and a good human rights record. Though territorial disputes and misunderstandings persist with a few regional neighbors, Japan continues to work with regional and worldwide organizations like the United Nations to resolve those disputes peacefully. The country has been a strong ally of the U.S., and has provided significant support to the U.S. in the world wide war on terror. Even though Japan is considered in the noticed material as an active collector of economic and proprietary information, its good human rights record indicates that the country is less likely to manipulate or coerce its citizens in a way that could force Applicant to choose between the interests of a foreign family member and the interests of the U.S.

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<sup>1</sup> Applicant's father no longer resides in Japan.

FIMC 8.a. also mitigates Applicant's employment in Japan since 1992. Most of Applicant's employers have been U.S. corporations. He is currently employed as a financial systems analyst by a U.S. defense contractor whose facility is located on a U.S. military installation in Japan. He maintains his only preference and allegiance is for the U.S. He also stated he would report any suspicious contacts to the appropriate authorities. Even though his prediction on how he would act in the future to a particular set of circumstances does not actually mean he would follow through with his predicted actions should those circumstances arise, his statements nonetheless, receive some favorable weight. ISCR Case NO. 02-26826 (November 12, 2003) Subparagraphs 1.a. through 1.g. are found for Applicant

### **Personal Conduct (PC)**

The Government argues that Applicant's foreign contacts and his failure to register with the Selective Service make PC DC 16.c. (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports the whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating the person may not properly safeguard classified information*) applicable to deny Applicant's security clearance application. Having weighed and balanced Applicant's remarks to question 18 of his SCA (Item 4) with his answer to the SOR, I do not find Applicant willfully failed to register with the SSS.

If prosecuted and convicted, a failure to register with the SSS, a blueprint for the U.S. to devise and administer a draft for males between 18 and 26 years of age, can result in criminal penalties of up to \$250,000.00 fine and up to five years' imprisonment. Over the years, registration with the SSS has become a condition for receiving other types of Federal benefits such as student aid, training, and Federal employment. This condition was imposed to persuade more eligible men to register. At the Federal level, a non-registrant may not be excluded from a benefit if he can show his failure to register was not knowing and wilful. Many states make registration with the SSS a requirement for receiving a state driver's license. It appears this requirement was applied to assure that even greater numbers of draft-eligible men are registered with the SSS.

Having weighed and balanced Applicant's remarks under question 18 of his SCA with his answer, I conclude Applicant mistakenly believed that because joining a branch of the service was optional, registering with the SSS was also optional. After learning that SSS registration was required by law, Applicant attempted to cure his act of omission by registering, but, having reached age 26, his registration attempt was rejected. Though not an excuse for not complying with the registration law, a factor that still must be considered is Applicant was (and still is) residing and working in Japan between the age of 19 and 26 (seven years of the time period in which an applicant

is required to register), and therefore, not exposed to the extant triggering mechanisms at the state and Federal levels reminding eligible stateside males to register.

Though Applicant's failure to register constitutes a serious lapse of judgment, his act of omission is mitigated under PC MC 17.c. (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*).

The failure to register is clearly not a minor offense because even a small number of omitted names from the Selective Service roster defeats the legislative objective of the SSS policy to devise and implement the fairest and most equitable selection system in case a draft is reinstated. However, there is no evidence of a pattern of similar behavior since 1999 (when Applicant finally made an unsuccessful attempt to register). Applicant has no criminal record and the persons interviewed by AFOSI have all recommended him for a position of trust.

After weighing and balancing all the disqualifying conditions and evidence against the mitigating conditions and evidence, in the context of the whole person model, Applicant has mitigated the security concerns associated with the FI guideline and the PC guideline. Subparagraphs 1.a through 1.g., and subparagraph 2.a. are resolved in Applicant's favor.

### **FORMAL FINDINGS**

Paragraph 1 (Foreign Influence, Guideline B):

FOR THE APPLICANT

Subparagraph a.

For the Applicant.

Subparagraph b.

For the Applicant.

Subparagraph c.

For the Applicant.

Subparagraph d.

For the Applicant.

Subparagraph e.

For the Applicant.

Subparagraph f.

For the Applicant.

Subparagraph g.

For the Applicant.

Paragraph 2 (Personal Conduct, Guideline E):

Subparagraph a.

For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Paul J. Mason  
Administrative Judge